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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1937

No. 594

CALMAR STEAMSHIP CORPORATION,
Petitioner,

vs.

CHARLES W. TAYLOR.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT.

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HOWARD M. LONG,
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PAUL M. GOLDSTEIN,
IVAN P. PECHNER,
HOWARD T. LONG,
Of Counsel.

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BRIEF IN OPPOSITION TO PETITION FOR CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT.

I.

History of the Case.

This cause is now before the Court upon the petition of Calmar Steamship Corporation, appellant below, for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit, to review a decision of that Court (R. 326-31); which affirmed a final decree in Admiralty of the District Court of the United States for the Eastern District of Pennsylvania (R. 315), awarding Charles W. Taylor, the respondent, a former mariner on the SS. "Losmar", for maintenance and cure, the sum of $7,000.

The suit was brought by Taylor to recover damages for personal injuries and maintenance and cure for an injury suffered by him while a member of the crew of the "Losmar" (R. 3-7). Both the District Court and the Circuit Court of Appeals found that the respondent's injuries were not caused by any negligence of the petitioner (R. 311-12, R. 328), but both courts allowed Taylor an award of $7,000, for his maintenance and cure.

The Libel was filed on March 24th, 1936, and the case was tried in the District Court on June 15th, 16th and 23rd, 1936, on evidence taken by depositions out of court and by the testimony of witnesses who appeared before the court at the trial. All the medical witnesses testified in open court.

The District Court filed its opinion December 4th, 1936, and its decree on January 15th, 1937.

On January 30th, 1937, the appeal of the petitioner to the Circuit Court of Appeals was perfected. After the argument of the appeal, the Circuit Court of Appeals filed its opinion affirming the final decree of the District Court on September 8th, 1937.

No petition for a rehearing in the Circuit Court of Appeals was ever filed by the petitioner.

II.

Statement of Facts.

The respondent is not content to accept the statement contained in the petition for certiorari purporting to be a statement of the facts of the case. The findings of fact made by the Circuit Court of Appeals are conclusive so far as this Court is concerned under the authority of the many decisions of the Court.

The facts as found by the Circuit Court of Appeals in its opinion, in so far as they relate to this petition are as follows (R. 326-330):

"Libellant at the time of the trial was forty-three years old and had followed the sea for twenty-eight years. He shipped on the 'Losmar' on October 16, 1934, as a fireman. On February 9, 1935 at about four o'clock in the afternoon at the beginning of his watch he proceeded into the engine room to take over his duties and then went into the boiler room through the companionway which led from the engine room. In doing so his right foot struck against some steel retarders that were lying on the floor of the boiler room. These are used to retard the heat and gases in the boilers and from their use become quite sharp. They are taken out from time to time when the boiler is overhauled, and are placed on the floor of the boiler room. Just as libellant was about to enter the boiler room and before his foot struck the retarders the electric lights in the ship flickered and went out and it was in the ensuing darkness that the accident occurred. The lights went out because at the time the electric generators which provide the current for the ship's lights were being changed from the ship's steam to compressed air furnished from the shore, the ship then being in a shipyard at Sparrows Point, Maryland. There was a sharp conflict in the testimony as to whether the retarders were actually on the floor of the boiler room and as to whether the ship's lights went out at the time of the accident. The court below, however, found in the affirmative as to both and we are satisfied to accept its finding (fol. 474). Libellant's testimony was that following this accident he found that his right shoe had been cut through over the small toe and that the toe had been cut, bruised and swollen. He washed the wound with mercurochrome and two days later went to the Marine Hospital at Baltimore where he received medication for the foot. The record of the hospital, however, does not mention a cut or bruise, but refers only to an 'inflammatory lesion between fourth and fifth toes' which was diagnosed as 'ringworm, right foot.' It is undisputed that the condition of libellant's toe grew worse, that on a voyage of the 'Losmar' to the west coast it was necessary to remove him to a hospital

in the Panama Canal Zone on March 12th, where he remained until May 4th, having in the meantime suffered an amputation of the toe, and that when he was brought back to New York he was treated at the Marine Hospitals at Ellis Island and Stapleton where he remained until October 3rd. During this period his condition was diagnosed as thrombo-angiitis obliterans, commonly called Buerger's Disease. In the course of treatment for this disease he suffered three further amputations, the last involving his entire right leg below the knee. On October 3rd he was discharged to the out-patient department to return at intervals for re-examination and later to be fitted with an artificial limb. He was so fitted in December, 1935, and obtained the limb on January 15, 1936. * * *

"Libellant's second cause of action presents more serious questions. It was for maintenance and cure, which he claimed for the remainder of his life. It is not disputed that, while in the service of the respondent's vessel, libellant became afflicted with Buerger's disease, in the course of treatment for which he suffered four amputations, finally losing his right leg below the knee. Buerger's disease is an obscure disease of the arteries and veins. It was defined in this case by Dr. Buerger, for whom it was named, as an inflammatory, morbid process of the arteries and veins. Inflammation takes place on the walls of these vessels, most often in the feet and legs. Coincident with this, extensive (fol. 476) clotting appears, followed by a process of scar tissue replacement so that the affected arteries and veins are converted into hard fibrous parts, closing off the circulation of the members affected. This is followed subsequently by the secondary and visible effects, lesions, deteriorating changes and gangrene. The origin of the disease is not known and there is no known cure. The usual treatment consists of amputation of the affected parts and this often results in arresting the disease. All the medical witnesses, however, agreed that the disease is incurable and that its manifestations are very likely to recur in other extremities during the

life of the patient. *They also agreed that regular periodical observation of the patient and continual care and treatment is of great importance in arresting the progress of the disease.* Upon this evidence the court below found that the libellant would require such care for the remaining years of his life and awarded him the sum of $7,000, as the present equivalent of the cost of his maintenance and cure during the remaining period which he may be expected to live. * * *

"As we have indicated, the libellant is suffering from an incurable disease contracted while in the service of respondent's vessel. This alone would not entitle him to maintenance and care by the respondent for life since the obligation of the latter ends when it has provided him with the ordinary means of cure which medical science affords. However, in the present case we have the further fact that the incurable disease from which the libellant suffers is of a progressive nature and is very likely to produce fresh manifestations in the future in other parts of his body. The uncontradicted evidence indicates that continuing care and treatment is of the utmost importance in arresting the further progress of the disease. Under these circumstances we cannot say that the ordinary means which medical science affords for the treatment and care of this disease will be exhausted prior to his death. On the contrary during the remainder of his life medical care will be necessary to restrain the ravages of the disease. His remaining life is, therefore, a reasonable time during which to provide maintenance and cure. It follows under the principles of the admiralty law to which we have referred that he is entitled to the cost of his maintenance and care from the respondent during the remainder of his life. In so holding we have not overlooked the dicta appearing in a few cases (The Kenilworth, 137 Fed. 1003; Raymond *v.* The Ella S. Thayer, 40 Fed. 902) to the contrary effect. Those cases were clearly distinguishable on their facts, however, and the question before us was not present in them. The underlying basis for the rule requiring the provision of mainte-

nance and cure is one of common humanity. *A seaman rendered helpless in the service of his ship may not be cast adrift, but must be cared for at the ship's expense so long as care is reasonably required and may be effective in checking his malady or curing his wounds and restoring his health.* This principle applies with peculiar force to the facts of this case.". (Italics ours.)

Upon these facts the Circuit Court of Appeals affirmed the District Court and allowed the respondent Taylor the sum of $7,000, for his cure and maintenance.

It is to be noted from a comparison of the petition for certiorari that the opinion of the Circuit Court of Appeals clearly indicates that the petitioner is attempting not only to avoid the conclusiveness of the fact findings of the Circuit Court of Appeals and have this Supreme Court review the findings of fact made by both the District Court and the Circuit Court of Appeals, but also in several instances has misconstrued such fact findings.

It is important to call the court's attention to the above situation for the reason that a consideration of the opinion of the Circuit Court of Appeals is convincing that that court based its opinion solely upon the facts of the instant case, and applied established legal principles to those facts.

The Court found (R. 329) that all the medical witnesses agreed not only that the disease of libellant's was incurable and that its manifestations were very likely to recur during the life of the patient, but that such witnesses also agreed *that regular periodic observation of the patient and continual care and treatment is of great importance in arresting the progress of the disease.* (Italics ours.)

Notwithstanding the findings of fact of the lower courts, petitioner alleges that respondent cannot be benefited by further medical care and treatment and that he is as cured as ordinary medical means can cure him; petitioner also contends that the District Court and the United States Cir-

cuit Court of Appeals based their award in this case upon the fact that the respondent may have a relapse which might necessitate further amputations (Pet. 6-7). Both of these contentions are entirely unwarranted and not in accordance with the facts. Both the lower courts found that not only will the respondent require continual medical care and attention for the remainder of his life, but they also based the award which they made in this case upon this fact, namely, that *further medical care and attention is required to check any further relapses,* and not because of the probability that there may be a relapse.

It is indeed unfortunate that the petitioner has misconstrued the facts of the instant case in the preparation of its petition for certiorari.

III.

ARGUMENT.

First Point.

The obligation of the petitioner to furnish and provide the respondent with maintenance and care continues so long as respondent can be benefited by further treatment.

This obligation is not created by Federal statute, but arises under the general admiralty law (*Great Lakes SS. Co. v. Geiger,* 261 Fed. 275). A mariner injured or falling sick while in the service of a ship is entitled to be maintained and cured at the expense of the ship and her owner. (*The Osceola,* 189 U. S. 158). In that case the Supreme Court carefully considered the ancient origin of the rule and its continuance down from the earliest times in the maritime laws of the various nations down to the date of that decision. The case further held that this duty to provide maintenance and cure for sick or injured seamen was imposed by the law as one annexed to the employment.

In *Rafael Cortes, Administrator, Petitioner,* v. *Baltimore Insular Line, Inc., Respondent,* 287 U. S. 367, Justice Cardozo of the Supreme Court held that such duty is contractual in the sense that it has its source in a relation which is contractual in origin, and that if failure to give maintenance and cure has caused or aggravated an illness, the seaman has his right of action for the injury thus done to him, the recovery in such circumstances including not only necessary expenses, but also compensation for the hurt.

The right to maintenance and cure arises even though there was no one at fault in causing the disability (*Cresci* v. *Standard Fisheries,* 7 F. (2d) 378).

Even if the injury results from the seaman's own negligence, he will not be deprived of the right to maintenance and cure (*Sorenson* v. *Alaska SS. Co.,* 243 Fed. 280, Aff. 247 Fed. 294).

The word "cure" is used in its original meaning of "care" and means proper care of the injured seaman and not a positive cure which may be impossible. The duty is to furnish means of cure and to use all reasonable efforts for that purpose. The end of the voyage does not end the obligation. If there was not sufficient time and facilities for the vessel to have then done its duty, its unfilled obligation may continue after the voyage ends (*The Mars,* 149 Fed. 729, 731).

> *"The duty continues until it becomes apparent that the injury or disease could not be benefited by further treatment."* (Italics ours.) (*The Point Fermin,* 70 F. (2d) 602, 604.)

The relation of a seaman to his vessel creates a personal indenture, establishing rights for maintenance and cure in case of personal injury. It results in much liberality of remedy in order that he may not be defeated of such humanitarian purposes (*The Montezuma,* 19 F. (2d) 355, 356).

The courts have never limited the period during which a seaman may be entitled to maintenance and cure, but have held that each case must be dependent upon its own particular facts as was said in *The Bouker No. 2*, 241 Fed. 831, 833:

> "It thus appears that the limits of cure or care, both as to kind of treatment and time of continuance must always depend on the facts of each particular case."

In *The Osceola*, 189 U. S. 158, 170, this Court incorporated the following in its decision.

> "By the English Merchants Shipping Act 17 and 18 Vict. Chap. 104, Sec. 228, Subd. 1, if the master or any seaman or apprentice reveals any hurt or injury in the service of the ship to which he belongs, the expense of providing the necessary surgical and medical advice, with attendants and medicines and all his subsistence until he is cured, or dies, * * * shall be defrayed by the owner of said ship without any deduction upon that account from the wages of such master, seaman or apprentice."

The ship owner's duty is not only to furnish medical care, but also to provide maintenance during the period which medical care is necessary, and as the Court said in the case of *Skolar* v. *Lehigh Valley R. Co.*, 60 F. (2d) 893:

> "The ship owners duty to furnish maintenance is co-extensive in time with his duty to furnish care."

In *The Iroquois*, 194 U. S. 240, this Supreme Court held that each case must depend upon its own circumstances and that the obligation to furnish cure and maintenance is a duty which has been imposed upon ship owners by all maritime nations, and the failure to provide such maintenance and care is a tort.

In the instant case the respondent, Taylor, is suffering from a disease which although incurable in a sense yet is of

a progressive nature, and its progress can be arrested and controlled by medical and surgical care extending over the period of the remainder of his life. The uncontradicted evidence shows, as is found by the Circuit Court of Appeals, that the progress of this disease can be arrested and controlled.

All the medical witnesses in the case are in agreement than continual medical care and attention is absolutely necessary for the remainder of respondent's life.

In fact, one of petitioner's doctors, David Warren Kramer, testified (R. 143-144) that in the past few years the medical profession has made excellent strides in the treatment of Buerger's Disease, not only in obviating amputation and operation, but even controlling its progress. He said that they cannot attack the disease itself, but with this newer apparatus such as the glass boot or some of the mechanical preparations that have been used, by electricity, and intravenous therapy, they are able in from 60 or 70 or 80 percent of such patients to definitely and considerably improve their conditions. Petitioner's medical expert further stated, that it was necessary to keep such patients under continual observation and treatment, and they should be seen once a week, and as their condition is controlled and improved it can be stretched out to once a month, but when possible these patients are certainly better off with regular periodic observation and treatment.

Respondent, Taylor's case, is not that of a permanent or incurable injury such as where a seaman may have suffered a broken limb which has not properly cured, amputation has been required and an artificial limb furnished; nor where there has been a fracture of a limb and the patient has become permanently crippled; nor where a man has lost an eye and a glass eye has been substituted. Such are

not cases of progressive diseases as in the instant case. In those cases the patients cannot be further benefited by the continuance of medical or surgical care, but such is not the fact in the instant case, since the continuance of maintenance and care is absolutely necessary to check the further progress of his disease.

As said by Justice Cardozo in the *Cortes* case (supra), the Petitioner has started upon the performance of its duty and its withdrawal from that duty is impossible, and its abandonment of such duty would be a tort, with the result that respondent, Taylor, would be left to his fate—a slow death by the further ravages of this disease.

Point Two.

The duty of a ship owner to a seaman falling sick or becoming injured in the service of his ship is not one of reimbursement to such seaman, but it is an obligation to provide and furnish proper and adequate medical care and maintenance to the injured or sick mariner. The failure of the ship owner to perform such duty constitutes a tort for which such ship owner may be held liable in damages.

This doctrine has been enunciated by this Supreme Court in a number of cases and has been definitely established as the law by this Court.

In *The Iroquois, supra,* Mr. Justice Brown held:

> "The duty to *provide* proper medical treatment and attendance for a seaman falling ill or suffering injury in the service of a ship has been imposed upon the ship owners by all maritime nations. It appears in the earliest codes of Continental Europe and was expressly recognized by this Court in the recent case of the Osceola 189 U. S. 158, 47 L. Ed. 760, 23 Sup. Ct. Rep. 483." (Italics ours.)

In *Chelentis* v. *Luckenbach SS. Co.*, 247 U. S. 372, 62 L. Ed. 1171, Mr. Justice McReynolds held:

> "The contract of a seaman is maritime and has written into it those peculiar features of the maritime law that were considered in the case of the Osceola 189 U. S. 158, 47 L. Ed. 760, 23 Sup. Ct. Rep. 483."

In *Rafael Cortes, Administrator, Petitioner* v. *Baltimore Insular Line, Inc.* (*supra*), decided by this Court on December 5, 1932, Mr. Justice Cardozo held:

> "A remedy is his also if the injury has been suffered through breach of the duty to *provide* him with 'maintenance and cure'. The duty to make such *provision* is imposed by the law itself as one annexed to the employment. *The Osceola, supra.* • • •
>
> "If the seaman has been able to procure his maintenance and cure out of his own or friend's money, his remedy is for the outlay, but personal injury there is none. If the default of the vessel and its officers has impaired his bodily or mental health, the damage to mind or body is none the less a personal injury because he may be free at his election to plead it in a different court. Pacific Co. *v.* Peterson, 278 U. S. 130. Nor is liability escaped by appeal to the distinction between acts of omission on the one hand and acts of commission on the other. Moch Co. *v.* Rensselaer Water Co., 247 N. Y. 160. A division is sometimes drawn between the termination of a relation at a time when it is still executory or future, and its termination when performance has gone forward to such a point that the abandonment of duty becomes an active agency of harm. Moch *v.* Rensselaer Co. (*supra*). The respondent is not helped though its treatment of the seaman be subjected to that test. Here performance was begun when the vessel started on her voyage with Santiago aboard and with care and cure cut off from him unless furnished by members or crew. *From that time forth withdrawal was impossible and abandonment a tort.* • • •
>
> • • •

"Approaching the decision of this case in a like spirit of liberality, we put aside many of the refinements of construction that a different spirit might approve. The failure to furnish cure is a personal injury actionable at the suit of the seaman during life and at the suit of his personal representative now that he is dead. * * *

"The conditions at sea differ widely from those on land, and the diversity of conditions breeds diversity of duties. This court has said that 'the ancient characterization of seamen as 'wards of admiralty' is even more accurate now than it was formerly'. Robertson *v.* Baldwin, 165 U. S. 275, 287. Another court has said: 'The masters authority is quite despotic and sometimes roughly exercised, and the conveniences of a ship out upon the ocean are necessarily narrow and limited.' Scarff *v.* Metcalf, 107 N. Y. 211, 215. 'Out of this relation of dependence and submission there emerges for the stronger party a corresponding standard or obligation of fostering protection.''.

The positive language of this Court in the above cases expresses very definitely that the duty to furnish care is an affirmative one and begins the moment the seaman embarks on the voyage. From that instant the shipowner cannot withdraw from this obligation. It is not in any sense of the word a duty to reimburse for money expended. It is a duty to *provide and furnish* the proper care as was stated above. The failure to live up to this duty amounts to a tort.

The failure of a ship owner to *provide* maintenance and cure might well result in the starvation of most injured seamen who are devoid of financial means. It is just this situation which the maritime law protects against by requiring the ship owner to *furnish and provide* rather than to reimburse for maintenance and care.

This same legal doctrine requiring the ship owner to *provide and furnish* medical care and maintenance has been

upheld repeatedly by this Court, and has been followed consistently by the lower Federal courts in numerous decisions.

The Mars, 149 Fed. 729, 731 (C. C. A. 3);
The Nyack (C. C. A. 7), 199 Fed. 383, 391;
Great Lakes SS. Co. v. *Geiger* (6 C. C. A.), 274, 278;
The M. E. Luckenbach, 174 Fed. 265, 268 (E. D. Virginia), Aff. 178 Fed. 1004 (C. C. A. 4);
The Fullerton, 167 Fed. 1 (C. C. A. 9);
Henry B. Fiske, 141 Fed. 188 (D. C. Mass.);
The Skolar v. *Lehigh Valley R. Co.,* 60 F. (2d) 893, 895 (C. C. A. 2);
The Point Fermin, 70 F. (2d) 602, 604 (C. C. A. 5).

In the instant case the lower court found in its opinion (R. 310) upon the uncontradicted medical testimony, that the respondent would be in need of care and treatment for the rest of his life or for an indefinite time before a cure could be pronounced, if ever.

In dealing with the amount of the care and maintenance to be awarded to the respondent, Judge Dickinson (R. 310), found that at the time of the trial, respondent was suffering from a progressive disease, that at that time no cure had been effected, that the patient was not only still in need of care and treatment, but would be for the rest of his life. He, therefore, considered the amount of money which the petitioner had paid for this purpose from June 14, 1935 to March 10, 1936, or the sum of $487.

This did not include the treatment and operations at the government hospitals at Balboa, Ellis Island and Stapleton, Long Island, and the artificial leg supplied to the respondent, all of which expenses were paid by the United States Government.

He further considered the age of libellant, 43 years, his expectancy of 25.71, and fixed a fair and reasonable sum for

his expense of his future care and maintenance of $7,000, which he found was a present value award allowance.

The Circuit Court of Appeals (R. 331) in reviewing Judge Dickinson's award, determined that it either should base its award upon the present value of the cost of maintenance and care during the remainder of respondent's life, or in the alternative to award him in the instant suit maintenance and care up to the time of the trial only and to require respondent, Taylor, to bring additional suits in the future to recover from the petitioner the amounts expended or incurred by him for maintenance and care during the remainder of his life. The latter alternative the Court determined would be an unwarranted burden upon this disabled seaman.

As was held by the Circuit Court of Appeals, there was no reason why the obligation to pay respondent for his future care and maintenance should not be liquidated upon the basis of a lump sum representing the present value of that *cost of maintenance and care,* for the period during which, according to the experience of men, the respondent might be expected to live (R. 331). That court expressly held that in fixing the amount of $7,000 it was making a liquidation of future payments for *care and maintenance* and not of damages.

It is clear from a reading of that opinion that the court made no award for damages. For had the court considered the various elements upon which a damage award should be based, the amount of such award would necessarily have been an amount many times greater and far in excess of $7,000.

Conclusion.

It is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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(2845)

SUPREME COURT OF THE UNITED STATES.

No. 594.—October Term, 1937.

Calmar Steamship Corporation, Petitioner, *vs.* Charles W. Taylor.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Third Circuit.

[March 28, 1938.]

Mr. Justice Stone delivered the opinion of the Court.

The question for decision is whether the duty of a ship owner to provide maintenance and cure for a seaman falling ill of an incurable disease while in its employ extends to the payment of a lump sum award sufficient to defray the cost of maintenance and cure for the remainder of his life.

Respondent was a member of the crew of petitioner's steamship "Losmar." Following an injury to his foot, allegedly caused by stubbing his toe against an object lying on the floor of the boiler room where he was employed, respondent was found to be afflicted with thrombo angiitis obliterans, otherwise known as Buerger's disease, an incurable malady of the veins and arteries. It is attended by interruptions of the blood stream, with consequent malnutrition of the affected parts, producing lesions, deteriorating changes of the tissues, and gangrene. Medical treatment and amputation of the affected parts may halt the advance of the disease, but its manifestations are likely to recur in other parts of the body, and medical opinion is that the disease tends to be progressive and may ultimately cause death. Care and treatment at frequent intervals, with periodic medical observation of the patient, are of aid in arresting its progress.

After February 12, 1935, when respondent was first hospitalized, he was given treatment at various marine hospitals, in the course of which he suffered four amputations upon the right foot and leg. On October 3, 1935, after his leg had been amputated below the knee, he was discharged to the "Outpatient Department to return at intervals for reexamination, and later to be fitted with an artificial

limb." Petitioner, from time to time, paid respondent small sums for maintenance and cure, continuing to do so until March 10, 1936, when they totaled $487. At about this time respondent brought the present suit in admiralty to recover maintenance and cure, and, in another count, for petitioner's negligence in causing the injury. The trial court found that petitioner was not negligent, but held that respondent is entitled to recover the cost of maintenance and medical treatment so long as such treatment is necessary, and that as his affliction is incurable, there should be a lump sum award based on his life expectancy. Its decree awarding a recovery of $7000 was affirmed by the Court of Appeals. 92 F. (2d) 84. Because of the importance of this question, we granted certiorari, — U. S. —, but denied a cross petition to review the Court of Appeals' affirmance of the decree for the ship owner on the negligence count. — U. S. —.

The ancient duty of a vessel and her owner to provide maintenance and cure for seamen injured or falling ill while in service was recognized and, to some extent, defined by this Court in *The Osceola,* 189 U. S. 158, 175. See also *Chelentis* v. *Luckenbach S. S. Co.,* 247 U. S. 372; *Pacific S. S. Co.* v. *Peterson,* 278 U. S. 130. The duty, which arises from the contract of employment, *Cortes* v. *Baltimore Insular Line,* 287 U. S. 367, 371, does not rest upon negligence or culpability on the part of the owner or master, *id.; City of Alexandria,* 17 Fed. 390 (D. C.); *The Mars,* 149 Fed. 729, 731 (C. C. A.); *Sorensen* v. *Alaska S. S. Co.,* 243 Fed. 280 (D. C.), aff'd 247 Fed. 294 (C. C. A.); *Brown* v. *The Bradish Johnson,* Fed. Cas. No. 1992, 1 Woods 301 (C. C.), nor is it restricted to those cases where the seaman's employment is the cause of the injury or illness. *The Wensleydale,* 41 Fed. 829 (D. C.); *The Bouker No. 2,* 241 Fed. 831 (C. C. A.). It is not an award of compensation for the disability suffered, *The Wanderer,* 20 Fed. 140, 143 (C. C.), although breach of the duty may render the owner liable for the consequential damages suffered by the seaman. *Cortes* v. *Baltimore Insular Line, supra,* 371. The maintenance exacted is comparable to that to which the seaman is entitled while at sea, *The Henry B. Fiske,* 141 Fed. 188, 192 (D. C.); *The Mars,* 145 Fed. 446, 447, (D. C.), aff'd 149 Fed. 729 (C. C. A.); *The Bouker No. 2, supra,* 836, and "cure" is care, including nursing and medical attention during such period as the duty continues. *Whitney* v. *Olsen,* 108

Fed. 292, 297 (C. C. A.) and cases cited; *Daugherty* v. *Thompson-Lockhart Co.*, 211 Fed. 224, 227 (D. C.).

In The Osceola, *supra*, this Court reserved the point whether the duty of maintenance and cure extends beyond the duration of the voyage, and that question, so far as this Court is concerned, remains an open one. The reasons underlying the rule, to which reference must be made in defining it, are those enumerated in the classic passage by Mr. Justice Story in *Harden* v. *Gordon*, Fed. Cas. No. 6047 (C. C.): the protection of seamen, who, as a class, are poor, friendless and improvident, from the hazards of illness and abandonment while ill in foreign ports; the inducement to masters and owners to protect the safety and health of seamen while in service; the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service.

It is plain that in many cases these purposes will not be accomplished if the owner's duty to furnish maintenance and cure ends with the voyage. If the injury or illness outlasts it, the seaman may still be left helpless and uncared for in a foreign port. Even if he is returned to the home port the inducement to the owner to care for the health and safety of seamen during the voyage and the inducement to seamen to take the necessary risks of a hazardous calling will be materially lessened. The chances of their prompt restoration to a service whose preservation is in the public interest, will be diminished if the right to maintenance and cure ends with the voyage.

Tacit recognition is accorded these considerations in the great number of cases in the lower federal courts sustaining the right to maintenance and cure for a reasonable time after the voyage—"reasonable time" being appraised with reference to the special circumstances of each case. *The Bouker No. 2, supra*, 835, and cases cited at 834. It is true that in most of these cases the efficient cause of the injury or illness was some proven act of the seaman in the service of the ship, but there are others in which it was deemed enough that he was incapacitated when subject to the call of duty as a seaman, and that his incapacity continued after the voyage had ended. *The Bouker No. 2, supra*, 835; *The Wensleydale, supra.*

We accept as supported by evidence, the finding of the district court that respondent's disease and the amputations which he suffered were not caused by the injury to his foot. But we think that even in such a case, whether the seaman is at home or abroad, his right to maintenance and cure may outlast the voyage. The policy underlying the obligation, so cogently stated by Justice Story in *Harden* v. *Gordon, supra,* and the liberality with which admiralty courts have traditionally interpreted rules devised for the benefit and protection of seamen who are its wards, *Robertson* v. *Baldwin,* 165 U. S. 275, 287; *Cortes* v. *Baltimore Insular Line, supra,* 377; *The Arizona* v. *Anelich,* 298 U. S. 110, 123, call for some extension of the duty beyond the term of service. The practical inconvenience and the attendant danger to seamen in the application of a rule which would encourage the attempt by master or owner to determine in advance of any maintenance and cure, whether the illness was caused by the employment, are manifest.

There remain the questions whether in the case of a chronic illness the duty continues so long as medical attendance and care are beneficial, until death if the need lasts so long, and whether a lump sum may be awarded to defray the cost of meeting the anticipated need.

In answering the first we lay to one side those cases where the incapacity is caused by the employment. As to them considerations not present here may apply, which might be thought to require a more liberal application of the rule than we think is called for in this case. Cf. *Reed* v. *Canfield,* Fed. Cas. No. 11641 (C. C.), with the comments of Judge, later Justice Brown in *The J. F. Card,* 43 Fed. 92 (D. C.), and see those of Judge Hough in *The Bouker No. 2, supra,* 834. But we find no support in the policies which have generated the doctrine for holding that it imposes on the ship owner an indefinitely continuing obligation to furnish medical care to a seaman afflicted with an incurable disease, which manifests itself during his employment, but is not caused by it. So far as we are advised it is without support in the authorities. We can find no basis for saying that, if the disease proves to be incurable, the duty extends beyond a fair time after the voyage in which to effect such improvement in the seaman's condition as reasonably may be expected to result from nursing, care, and

medical treatment. This would satisfy such demands of policy as underlie the imposition of the obligation. Beyond this we think there is no duty, at least where the illness is not caused by the seaman's service.

The award of a lump sum in anticipation of the continuing need of maintenance and cure for life or an indefinite period, is without support in judicial decision. Awards of small amounts to cover future maintenance and cure of a kind and for a period definitely ascertained or ascertainable have occasionally been made. *The Mars,* 149 Fed. 729, 730 (C. C. A.); *Wilson* v. *Manhattan Canning Co.,* 205 Fed. 996, 997 (D. C.). But the award here seems to us to be inconsistent with the measure of the duty and the purposes to be effected by its performance. The duty does not extend beyond the seaman's need. *Raymond* v. *The Ella S. Thayer,* 40 Fed. 902, 903 (D. C.); *The J. F. Card, supra,* 95; *The Bouker No. 2, supra,* 835; *The Santa Barbara,* 263 Fed. 369, 371 (C. C. A.); *Stewart* v. *United States,* 25 F. (2d) 869, 870 (D. C.); *Marshall* v. *International Mercantile Marine Co.,* 39 F. (2d) 551, 553 (C. C. A.); cf. *Holt* v. *Cummings,* 102 Pa. 212; *contra, Reed* v. *Canfield, supra.* The amount and character of medical care which will be required in the case of an affliction, as well defined even as Buerger's disease, cannot be measured by reference to mortality tables. Moreover, courts take cognizance of the marine hospital service where seamen may be treated at minimum expense, in some cases without expense, and they limit recovery to the expense of such maintenance and cure as is not at the disposal of the seaman through recourse to that service. *The Bouker No. 2, supra,* 835; *Marshall* v. *International Mercantile Marine Co., supra,* 553, and cases cited. Furthermore, a duty imposed to safeguard the seaman from the danger of illness without succor, and to safeguard him, in case of illness, against the consequences of his improvidence, would hardly be performed by the payment of a lump sum to cover the cost of medical attendance during life.

The seaman's recovery must therefore be measured in each case by the reasonable cost of that maintenance and cure to which he is entitled at the time of trial, including, in the discretion of the court, such amounts as may be needful in the immediate future for the maintenance and cure of a kind and for a period which can be definitely ascertained.

The courts below have made no findings sufficient to enable us to fix the amount which respondent is entitled to recover. The decree is accordingly reversed and the cause remanded to the district court for further proceedings in conformity with this opinion, and without prejudice to any later suit by respondent to recover maintenance and cure to which he may then be entitled.

Reversed.

Mr. Justice BLACK is of opinion that the judgment should be affirmed.

Mr. Justice CARDOZO took no part in the consideration or decision of this case.

A true copy.

Test:

Clerk, Supreme Court, U. S.